

## **EXHIBIT D**

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
LUFKIN DIVISION

BLACKBOARD, INC.

*Plaintiff,*

v.

DESIRE2LEARN, INC,

*Defendant.*

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Civil Action No. 9:06CV155

JUDGE RON CLARK

**ORDER ON DEFENDANT'S RENEWED MOTION TO STAY**

Desire2Learn, Inc. ("D2L") filed a motion to reconsider this court's previous order denying D2L's motion to stay pending reexamination of U.S. Patent No. 6,988,138 by the U.S. Patent and Trademark Office. This court orally denied D2L's original motion to stay on December 8, 2006. *See* Case Management Conference, December 8, 2006, Tr. pp. 1-15. Now, more than four months later, D2L asks this court to reconsider its initial ruling and stay this case.

The factors discussed at the December 8<sup>th</sup> hearing weigh even more heavily against a stay at this stage of the proceedings. Substantial discovery has been conducted by the parties, and the *Markman* in this case is set for July 2007. There is no indication that a stay would result in any savings of time or resources at this point. *See Sovereign Software LLC v. Amazon.com*, 356 F.Supp.2d 660, 662 (E.D. Tex. 2005); *Xerox Corp. v. 3Com Corp.*, 69 F.Supp.2d 404, 406 (W.D.N.Y. 1999).

IT IS THEREFORE ORDERED that, for the reasons stated at the December 8, 2006 hearing and in this Order, Desire2Learn's Renewed Motion to Stay [**Doc. # 58**] is **DENIED**.

So **ORDERED** and **SIGNED** this **10** day of **March, 2007**.



Ron Clark, United States District Judge